

CLAUSE H-54 – WARRANTY OF SUPPLIES OF A NON-COMPLEX NATURE (August 2002)

(a) Definitions.

"Acceptance," as used in this clause, means the act of an authorized representative of SURA by which SURA assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the subcontract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Subcontractor and related services required under the subcontract. The word does not include "data."

(b) Subcontractor's obligations.

- (1) Notwithstanding inspection and acceptance by SURA of supplies furnished under this subcontract, or any condition of this subcontract concerning the conclusiveness thereof, the Subcontractor warrants that for _____.
 - (i) All supplies furnished under this subcontract will be free from defects in material or workmanship and will conform with all requirements of this subcontract; and
 - (ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this subcontract.
- (2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Subcontractor. However, the Subcontractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this subcontract and the Subcontractor's plant, and return.
- (3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- (4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this subcontract.

(c) Remedies available to SURA.

- (1) The Subcontracting Officer shall give written notice to the Subcontractor of any breach of warranties in paragraph (b)(1) of this clause within ____.
- (2) Within a reasonable time after the notice, the Subcontracting Officer may either -
 - (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this subcontract within the meaning of paragraph (b)(1) of this clause; or
 - (ii) Retain such supplies and reduce the subcontract price by an amount equitable under the circumstances.
- (3) (i) If the subcontract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the subcontract. The Subcontracting Officer -
 - (A) May, for sampling purposes, group any supplies delivered under this subcontract;
 - (B) Shall require the size of the sample to be that required by sampling procedures specified in the subcontract for the quantity of supplies on which warranty action is proposed;
 - (C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
 - (D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
- (ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Subcontracting Officer may exercise one or more of the following options:
 - (A) Require an equitable adjustment in the subcontract price for any group of supplies.
 - (B) Screen the supplies grouped for warranty action under this clause at the Subcontractor's expense and return all nonconforming supplies to the Subcontractor for correction or replacement.

- (C) Require the Subcontractor to screen the supplies at locations designated by SURA within the continental United States and to correct or replace all nonconforming supplies.
 - (D) Return the supplies grouped for warranty action under this clause to the Subcontractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
- (4) (i) The Subcontracting Officer may, by subcontract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Subcontractor the cost occasioned to SURA thereby if the Subcontractor -
- (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
 - (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Subcontracting Officer may authorize in writing) after receipt of notice from the Subcontracting Officer specifying such failure.
- (ii) Instead of correction or replacement by SURA, the Subcontracting Officer may require an equitable adjustment of the subcontract price. In addition, if the Subcontractor fails to furnish timely disposition instructions, the Subcontracting Officer may dispose of the nonconforming supplies for the Subcontractor's account in a reasonable manner. SURA is entitled to reimbursement from the Subcontractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.
- (5) The rights and remedies of SURA provided in this clause are in addition to and do not limit any rights afforded to SURA by any other clause of this subcontract.